IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 116 of 2003
and
CIVIL APPLICATION NO 561 of 2003
in
SPECIAL CIVIL APPLICATION NO 6756 of 2002
with
LETTERS PATENT APPEAL NO 151 of 2003
and
CIVIL APPLICATION NO 993 of 2003
in
SPECIAL CIVIL APPLICATION NO 6417 of 2002
with
LETTERS PATENT APPEAL NO 152 of 2003
and
CIVIL APPLICATION NO 994 of 2003
in
SPECIAL CIVIL APPLICATION NO 6416 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FATMABEN NURMOHAMMED VOHRA

Versus

ALPESH NAVINBHAI PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 116 of 2003 & CA 561/03
MR MIHIR H JOSHI for Appellant No.
NOTICE SERVED BY DS for Respondent No. 1-2
MR HL JANI, A.G.P. for Respondent No. 3-4,7
MR PS CHAMPANERI for Respondent No. 5
DELETED for Respondent No. 6
MR HARIN P RAVAL for Respondent No. 8-9

2. LETTERS PATENT APPEAL No. 151 & 152 of 2003 & CA 993/03 and 994/03
MR MIHIR H JOSHI for Appellant No.
MR HL JANI, A.G.P. for Respondent No. 1-3
MR PS CHAMPANERI for Respondent No.4
MR HARIN P RAVAL for Respondents 5-6

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 07/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Admit. learned A.G.P. Shri H.L.Jani, waives service of Notice of admission for respondents No.3,4 & 7 in LPA 116/03 and for respondents 1 to 3 in LPA 151/03 & 153/03, Shri P.S.Champaneri, learned Counsel waives service of Notice of admission for respondent No.5 in LPA 116/03 and for respondent No.4 in LPA 151/03 & 152/03 and Shri Harin P.Raval, learned Counsel waives service of Notice of admission for respondent Nos.8 & 9 in LPA 116/03 and for respondents No.5 & 6 in LPA 151/03 & 152/03. With the consent of parties all these matters are disposed of by this common Judgment & order as they are arising out of common Judgment & order dated 19.9.2002 passed by the learned Single Judge of this Court.

2. Learned Single Judge disposed of in all 5 writ petitions, viz. Special Civil Application No.6415/02, 6416/02, 6417/02, 6756/02 and 6615/02 by his common Judgment and order dated 19.9.2002. The present Letters Patent Appeals No.116/03, 151/03 and 152/03 are filed in Special Civil Application No.6756/02, 6417/02 and 6416/02 respectively. No Appeals are filed in Special Civil Application No.6415/02 and 6615/02, which were already disposed of by learned Single Judge by his common Judgment and order dated 19.9.2002.

3. The appellants - petitioners filed the above writ petitions, viz. Special Civil Application No.6756/02,

6417/02 & 6416/02 before the learned Single Judge of this Court. They are all Municipal Councillor of Anand Municipality - respondent No.4. It was contended that though they had not tendered their resignation at the last minute i.e. just one day prior to the election which was to be held on 11.7.2002 the President of Anand Municipality made a show that they have tendered their resignation and their resignation were accepted. Coming to know about such false resignation the petitioners approached the Collector on that very day i.e. on 10.7.2002, through their lawyers, and requested the Collector to grant stay in view of the Judgment of this Court, reported in 18 GLR 703. However, the Collector did not pass any interim order on it and since the election was scheduled immediately on the next day i.e. on 11.7.2002, they had moved the 3 writ petitions on the same day before this Court. The learned Single Judge of this Court entertained all those writ petitions on 11.7.2002 itself and passed ad.interim order allowing the petitioners to cast their votes with certain conditions.

4. It seems that simultaneously the petitioners had also approached the Court of learned Civil Judge (SD), Anand, by way of Regular Civil Suit No.225/02. The learned Judge issued notice on it on 10.7.2002 and after hearing the other side the order was passed on 11.7.2002 on an Application below Ex.5 and they were permitted to cast their votes.

Thus, the petitioners availed both remedies, one before the Civil Court by way of Civil Suit and another before this Court by way of writ petition and also obtained favourable orders from both the Courts and accordingly casted their votes.

5. It appears from the order of the learned Single Judge that one another writ petition i.e. Special Civil Application No.6415/02 was filed by different petitioner from Bagasara where the same question was raised. In that case also the petitions were filed before this Court and simultaneously the Civil Suit was also filed before the Civil Court. There also the Civil Court and this Court granted interim relief in their favour and accordingly they casted their votes. However, as soon as they got interim orders from this Court they immediately withdrew the Suit filed before the Civil Court.

6. The learned Single Judge by his common Judgment and order dated 19.9.2002 dismissed Special Civil Applications No. 6415/02, 6416/02 and 6417/02 with

exemplary cost of Rs.10,000/- and out of the said cost Rs.5000/- in each petition was ordered to be paid to the State Government and its Officer i.e. respondents No.1,2 & 3 and remaining amount of Rs.5000/- was ordered to be paid to the respondent Anand Nagarpalika. All the petitioners were also directed to deposit the amount of cost within one month from the date of the order and respondents were granted liberty to withdraw the said amount.

Learned Counsel Shri Joshi for the appellants petitioners, in all these Appeals, have no grievance regarding exemplary cost of Rs.10,000/- awarded in each petition by the learned Single Judge. However, the main grievance in all these Appeals is against the strictures passed against the appellants - petitioners by the learned Single Judge and the direction issued by the learned Single Judge of initiating contempt proceeding against them for suppression of material fact, namely, filing of Suit before the Civil Court.

7. Having heard learned Counsel Shri Joshi for the appellants and having carefully considered the common judgment and order passed by the learned Single Judge, passing serious strictures against the appellants petitioners for suppression of material fact of filing Suit and obtaining interim relief, we are fully convinced that the learned Single Judge had not committed any error in passing such strictures. In fact there is increasing tendency amongst the litigants to either suppress the material fact or make false statement before the court. Therefore,they should be suitably dealt with. Such an act of the persons prima facie constitute contempt for which they can be suitably dealt with. Therefore, no fault can be found with the directions issued by the learned Single Judge of initiating contempt proceeding against the appellants - petitioners. However, we find from the common judgment and order passed by the learned Single Judge that he took lenient view of the matter in case of the petitioners of Bagasara Municipality on the ground that after this Court passed an interim order in their favour they withdrew the Suit on the next day from the Civil Court. All the petitioners, including the petitioners of Bagasara Municipality, had tendered unconditional apology before this Court for making false statement in their petition that they had not filed any Suit or proceedings before any Court, including the trial Court or Supreme Court. Therefore, merely because the petitioners' Councillor of Bagasara, who have withdrawn their suit, would not be sufficient to spare them free from contempt proceeding. Be that as it may. When this

aspect of the case appealed to the learned Single Judge for not initiating the contempt proceeding against them then we are of the considered opinion that when all the petitioners, including the present appellants, tendered their unconditional apology before this Court then as an exception by showing grace they could have been also spared with warning that in future if they indulge any such type of activity then they will be strictly dealt with.

8. In view of the above discussion, all these Appeals are partly allowed and the part of the common Judgment and order dated 19.9.2002 passed by the learned single Judge of this Court in writ petitions directing initiation of contempt proceeding against the present appellants - petitioners is hereby quashed and set aside. No order as to costs.

Civil Applications No.561/03, 993/03 and 994/03 respectively filed in LPA 116/03, 151/03 & 152/03 are disposed of as the main Appeals are disposed of.

(B.J. Shethna, J.)

Date : August 07, 2003

(Ravi R.Tripathi,J.)

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